F. W. Seward

ENGLAND'S LIABILITY FOR INDEMNITY:

REMARKS

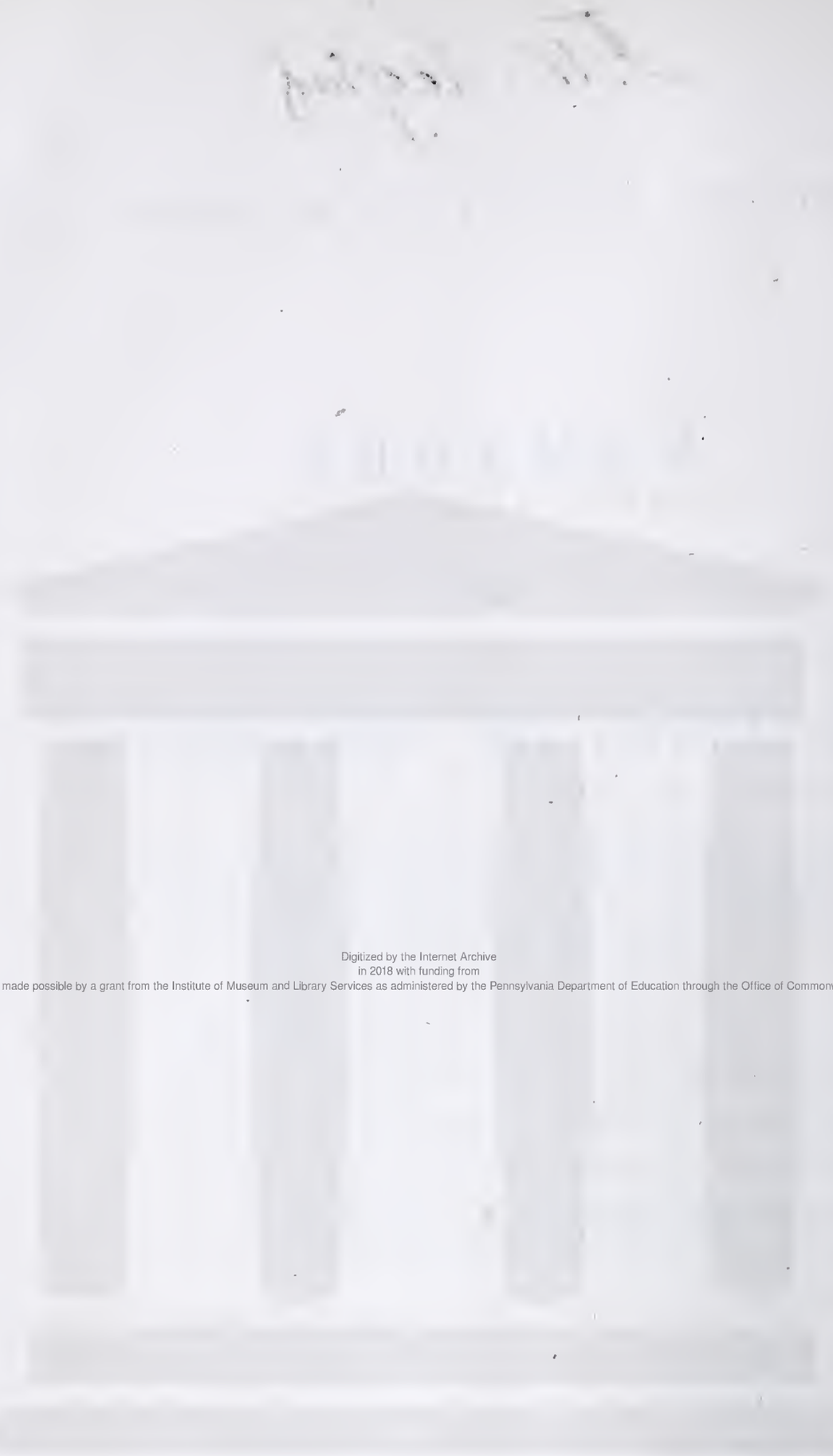
ON

THE LETTER OF "HISTORICUS"

DATED NOVEMBER 4TH, 1863; PRINTED IN THE LONDON "TIMES," NOVEMBER 7TH; AND REPRINTED IN THE "BOSTON DAILY ADVERTISER," NOVEMBER 25TH.

BY CHARLES G. LORING.

BOSTON:
WILLIAM V. SPENCER,
134, WASHINGTON STREET.
1864.



PREFATORY NOTE.

ENGAGEMENTS of the writer of the following papers, peculiar to the month of November and the two succeeding, prevented his earlier consideration of the important topic to which they relate, and which appears to be exciting equal interest on both sides of the Atlantic. They were originally printed in the "Boston Daily Advertiser"; and they are here reprinted without change, except the omission of a few passages having no bearing whatever upon the argument, and the addition of some of the foot-notes and the Appendix.

In selecting the Letter of "HISTORICUS" in the London "Times" of November 7th, as the immediate subject of them, the author was governed solely by the obvious consideration, that it was to be accounted as in the nature of an official declaration on the question of England's liability, coming as it did from one of her most distinguished writers on international law, and one who appears more than any other person to influence, or rather to guide, public opinion in England on the great questions of the day, touching the relations between her and the United States, which have grown out of the Rebellion.

It will be perceived, that the purpose of these papers is not to controvert the doctrine of neutral obligations which "HISTORICUS," in that Letter, attempts to maintain; namely, that, in cases where a vessel of war has been unlawfully equipped within the territory of a neutral nation, and has escaped, without default on the part of its Government, to commit hostilities against a friendly power, the responsibility of such neutral is confined to the restoration of any prizes which that vessel may bring within its jurisdiction, and to prohibiting her from entering its ports; but that their purpose is to show, that, if this doctrine be sound, Great Britain is nevertheless liable (upon the true interpretation of it, and the carrying-out of its principles to their legitimate issue,) to make compensation for the depredations complained of, because of her failure to fulfil the duty it imposes; — and further to show, that there are other reasons for holding her to such responsibility, independently of the question of the soundness or unsoundness of this doctrine.

Without proposing to enter here into any discussion of that question, it may be suggested, that the precedents and authorities adduced in support of his doctrine are thought to be by no means conclusive in favor of the limited nature of neutral responsibility which "HISTORICUS" contends for, but are to be accounted proofs, rather that the science of international law had advanced thus far in distinctly establishing the absolute duty of neutral nations to that extent, than that no further responsibility might reasonably be demanded upon a just application of its principles.

Since these papers were placed in the hands of the printer, another Letter of "HISTORICUS" to the Editor of the London "Times," dated February 16th, has appeared in this country. It is characterized by the same vigor of thought and style, and

the same learning, that have gained for him such deserved celebrity here as well as in his own country; and also by what does him far greater honor, a manly independence in opposing some of the false notions of international law which the adversaries of the United States have labored to impress upon the public mind, — in vindicating the good faith of the American courts, — and in expressing an inclination to the opinion, if not a substantial conviction, that the "Alabama" and the "Florida" should have been forbidden to enter British ports, by reason of their unlawful enlistments, if not unlawful equipment, within the jurisdiction of England.*

It will be perceived, that, thus far, he to a great extent confirms the soundness of the position taken in the Second of the following papers. He does not, indeed, concede that England is justly bound to make indemnity for the losses which the citizens of the United States have sustained by reason of her failure to issue such prohibition; nor is any such concession, in the present state of information and feeling in England, to be expected. Such liability, however, seems to be an inevitable result of the principles of his doctrine, carried out to their legitimate consequences.

We wish we could add, that the Letter which is made the subject of discussion in the following pages was free from the unfriendly and insulting allusions to this country and its eminent men, which characterize this author's productions, with the exception of his remarks on its early diplomatic and judicial history. It is to be regretted, that in the discussion of questions of such momentous interest, directly involving the friendly relations of the two greatest commercial States in the world, and, it may be, the question of peace or war be-

---

* See page 18, note.

tween them, occasion should seem to be taken for gratuitous reproaches and insults, which can have no other effect than the exaggeration of national conceit and unkind feelings on one side, and the exasperation of growing national animosity on the other. If the discussion could be confined to fair debate, with no crimination or recrimination excepting such as may be necessarily implied by true statements and legitimate argument, the peace and honor of both countries, so far as it might exert an influence, would be better subserved.

There is, however, one imputation upon the Government of the United States, contained in this new Letter, of February 16th, which cannot in justice be suffered to pass without particular notice.

Nothing could be more absurdly unjust than the charge, that the *American Government*, in making these claims (and they have been made in a manner certainly not wanting in diplomatic courtesy), is influenced "by unworthy motives for party objects." On the contrary, the universal sentiment and deliberate opinion of the American people are in accord with the position taken by the Government upon this subject; and, until better reasons to the contrary can be suggested than any hitherto given, these claims will be persevered in, — not indeed, it is hoped, with unseemly "swagger" or "bluster," but with resolute persistence in the manner in which the claims of a nation, believing in their justice, and conscious of its power to sustain them, should be urged; and with proper respect for the good faith of the party upon whom they are made, until they shall have been attentively listened to and fairly disposed of, however distant may be the time before a due consideration of them may be obtained.

Perhaps it may not be amiss to add, that, if the following pages, falling under the eyes of an English reader, should be

thought to be tinctured with any of the prejudice or unkindliness of spirit towards England, which the author so earnestly deprecates as existing there against his own country, he will regret it, not only for any derogation from his claim to be candidly listened to, which such prejudice or unkindly spirit would justify, but also for the wrong which such an impression would do to the feelings which he entertains towards most highly valued friends in Great Britain, and towards "the old homestead" itself, notwithstanding his sense of the injustice which he thinks imputable to many of its present occupants; and also for the wrong it would do to his desire of a speedy return of relations of cordial amity between the two nations. He has not feared to use plain speech in setting forth his views; believing that this (being, as he trusts it is, within the bounds of courtesy) is the readiest means of access to frank and honest minds, whether in England or America.

C. G. L.

Boston, 22 March, 1864.

P.S. — At the time when these papers were written and put into the hands of the printer, the author had not seen the diplomatic correspondence upon the subject, in the Message and Documents for 1863–4, Part I.; and, therefore, he was not informed how far the opinions and remarks, which he has presented, correspond with those expressed by Mr. Seward and Mr. Adams.

ENGLAND'S

LIABILITY FOR INDEMNITY.

I.

The author of the Letters addressed to the London "Times," under the signature of "Historicus," is unquestionably among the ablest writers upon international law whom the events of the Rebellion have called forth. His letters upon Recognition and Intervention produced a great, not to say an essential, change of sentiment in England, of the highest importance to the welfare of both countries. Nor should we be unmindful of his claims to our respectful acknowledgments for his frankly avowed appreciation of the early judicial decisions, and the policy of the Government, of the United States upon the subject of neutral rights and obligations, to which he gives ample credit.

This Letter of November 4th is impressive in its array of legal learning, and its familiarity with American jurisprudence and statesmanship, upon the subjects of which it treats. But the off-hand manner in which he assumes to dispose of some of these is far from satisfactory; while his contemptuous allusions to several of our countrymen, entitled, at the least, to equal consideration with himself, disfigure an argument, not less interesting to seekers for truth on this side of the water than to those on his own.

The letter purports to be in answer to an inquiry made by Mr. Lindsay, "Whether *any* or *what* demands have been made by the Cabinet of Washington in respect of the 'Alabama'?"

In reply to this inquiry, he says that he can give no information; but he adds, "I think I can tell him that which will answer his purpose as well, — what answer the law and practice of nations affords to *such demands.*" * He thus obviously *includes all* demands which may have been made, founded upon any alleged default or omission of the English Government to discharge the neutral duties of England in reference to the "Alabama," of whatever nature, whether before or after her departure upon her cruise; and it will be seen that his conclusion is equally comprehensive.

Having thus stated the problem, he proceeds to lay down two fundamental propositions, seemingly as the basis for the proposed solution of it.

His first proposition is: "That it is *the right, and in some sense the duty,* of a neutral State to prevent its soil from being made the base of hostile operations against either belligerent, is admitted on all hands; and a culpable slackness or indifference in the Executive as to such transactions would be justly regarded by the injured belligerent as evidence of a fraudulent neutrality, which he would be entitled to construe as a connivance at and participation in the schemes of his enemy. Such conduct would amount to an alliance or complicity with the enemy, equivalent to hostility, and justly treated as such.

"So far, the matter is clear enough. But cases will often arise, — as, indeed, they have often enough arisen, within the experience of American neutrality, — where, in spite of the most honest intentions and disposition on the part of the neutral State, their authority is defied or their vigilance is eluded. Cruisers may be equipped and men may be enlisted within their jurisdiction, not by the consent, but in spite of all the efforts, of the neutral Government. The vessels so equipped will escape, and afterwards become

---

* All Italicizing is by the present writer.

clothed with a regular commission issued by the belligerent."

These two branches of the first proposition seem to embrace substantially all claims that could be made, of whatever nature, concerning the "Alabama," and so to correspond with the general character of the problem. But the writer immediately proceeds to limit the inquiry in these words, following the word "belligerent:" "What, under such circumstances, are the duties, and what is the limit of the responsibility, of the neutral State? This is the important question which I now propose to discuss." Thus he confines the discussion to the second branch, containing one only of the various grounds of claim; and that, as will be seen, perhaps the narrowest of them all.

His second proposition is in these words: "In this, as in all cases where *belligerent rights* and *neutral duties* are in question, we cannot do better than have recourse to those *valuable mines of international law and justice which are to be found in the early records of American statesmanship and American jurisprudence.*" An admission which, however just, indicates a degree of independence and magnanimity, in the present state of public feeling and opinion in England, that deserves all praise, and that cannot fail to be eventually appreciated to his lasting honor on both sides of the Atlantic.

He then proceeds to state the manner in which this question arose in the United States at the beginning of the war of the French Revolution, on the fitting-out and commissioning of privateers in the United States by the French minister (M. Genet), and their captures of prizes, some seized within the jurisdiction of the United States, and some taken on the high seas, and afterwards brought into American ports. He mentions the representations consequently made by the British Minister (Mr. Hammond) to the American Cabinet, and the result of its deliberations, contained in a written

document signed by all its members (to be found in Sparks's "Life and Writings of Washington," vol. x. App. No. xix.). He then gives the announcement of their decision to the belligerents in a letter to M. Genet of Aug. 7th, 1793, and in another to Mr. Hammond of Sept. 5th; in which letters, he says, he thinks "will be found comprehended the whole duty of neutrality respecting the subject" he is discussing. And next he refers to the treaty of 1794, article seventh, negotiated by Mr. Jay, to show that no indemnity was therein provided for, excepting in cases where three things concurred: viz., "first, that the prize had been taken within American waters, or by a cruiser illegally equipped within American territory; secondly, . . . that the prize had been brought within American jurisdiction; thirdly, that the American Government had, under these circumstances, advisedly abstained from enforcing restitution."

And from the documents he thus cites, and a few judicial decisions of the English and American courts, he attempts to maintain, —

First, That, according to the settled law of nations, a cruiser unlawfully equipped within a neutral's territory, and bearing the commission of a recognized belligerent, is, *in all other places than those within the neutral jurisdiction*, a lawful vessel of war, the conduct of which, no one, not even the neutral, has a right to question, and with whose prizes no one has a right to meddle; that she is covered by the immunity of the flag she bears, which must be equally respected by such neutral and by all other nations in all places without such neutral's jurisdiction.

Secondly, That the position, that maritime belligerency ought not to be conceded to a power which has no prize-courts, is "a piece of ignorant rubbish"; the rule that requires the bringing-in of a captured vessel to be tried by a prize-court being intended exclusively for the benefit of neutrals, and not of belligerents, neither of whom can have legal ground of complaint for any thing done by his adversary.

Thirdly, That so long as the prizes, captured by such a vessel unlawfully equipped in neutral territory, are not brought within the neutral jurisdiction, they are good prizes, with which the neutral Government is not bound to interfere, and for which it is under no obligation to make indemnity.

Fourthly, That the whole duty of the neutral Government, in such a case, is confined to restoring to the owners any prizes made by such vessels brought within its territorial jurisdiction, requiring the immediate departure of such vessels from her ports, and prohibiting to them the asylum therein which it affords to the lawful cruisers of both belligerents.

And, as no case has arisen, or is likely to arise, of a prize being taken into an English port, as he asserts, he winds up with the conclusion (no doubt very comforting to his loyal fellow-subjects, and very encouraging to Southern sympathizers in their future efforts to furnish the Rebels with ships of war from English ports), that, if the "Alabama" was unlawfully equipped in England, she ought to be forbidden access to any port within the jurisdiction of Great Britain; and that, if she comes with a prize, it should be taken from her and restored to the original owner, and she should be compelled to depart; *that this is all that can be demanded of England;* and, "therefore, *that this 'tall talk' of claims of compensation against Great Britain for prizes taken by the 'Alabama' is mere nonsense, which has no color or foundation either in reason, history, or law.*" — Q. E. D.

It would be difficult, it is thought, to find on this side of the water a specimen of "taller talk" than this conclusion from such premises.

The foregoing somewhat minute statement of the positions taken, and of the inferences drawn from them, by this eminent writer upon International Law, has been thought not merely convenient, but essential to a full understanding of one of the most important questions that has arisen, or ever can arise,

between England and the United States, whether this question be considered in reference to the pecuniary interests involved, or to what is still more important, — the principles underlying the observance of international good faith; or to the very possible breach of friendly relations to which it may lead; or last, but perhaps of not least moment, to the effects which its decision may have upon the future established law of nations and the peace of the world.

Now, it seems to be somewhat remarkable, that any one, in undertaking to answer an inquiry concerning the validity of all claims of whatever nature made upon England by the United States for indemnity for spoliations committed by the "Alabama," should exclude all other grounds of complaint, and confine the reply and argument to the nature and extent of such liability upon the assumption, that if this cruiser were unlawfully equipped within the jurisdiction of England, and suffered to escape therefrom, all had been done surreptitiously, and without default or neglect on the part of her Government.

For, if reference be had to the correspondence on this subject between Mr. Seward and the American Minister at London, between that Minister and the British Minister for Foreign Affairs, between the American Minister and the Consul of the United States at Liverpool, and between that consul and the officers of the customs, to the numerous other official documents already published upon this topic, and also to the discussions in the gazettes and pamphlets on both sides of the water, no mistake can exist concerning the main foundation of these claims. It is manifest that they are distinctly placed not only upon the ground that this vessel was unlawfully equipped within the jurisdiction of England, but also upon the ground of "culpable slackness or indifference" on the part of the British Cabinet, and culpable carelessness and negligence, if not evident connivance, on the part of British custom-house officers, and other officials

intrusted with the application of the laws, in permitting her to be so equipped, and to escape from that jurisdiction.

Nor can this question be reasonably avoided on the ground, that, admitting the liability of England to the fullest extent, if her Executive were guilty of "culpable slackness or indifference," it is reduced to a question of evidence merely about facts, upon which the author does not choose to enter. On the contrary, it is mainly and evidently a question of principles. It cannot be determined whether an unlawful equipment was accomplished, or any culpable default existed, without first ascertaining the legal nature of such equipment, the nature of the neutral's duty to be performed, and the means and instrumentalities which might and should have been employed in performing it; and all these are to be measured and determined by the principles of the law of nations.

And it is hazarding nothing to say, that if we take the indisputable facts established by the correspondence and documents above referred to, together with the account of the completion of the "Alabama" as a ship of war, and of her starting upon her cruise, published by one of her officers, and with the Report of the so-called Secretary of the Navy of the rebels,* and then apply to them the principles to be drawn from "those valuable mines of International Law and Justice which are to be found in the early records of American statesmanship and American jurisprudence," and which "HISTORICUS" recognizes as of the highest authority, — if we do this, not a reasonable doubt can exist of the unlawful equipment of the "Alabama," and of the culpable carelessness and indifference of the English Cabinet, and of the gross negligence or the connivance of the custom-house officers (and other officials whose duty it was to apply the laws) in suffering her to be so equipped, and to launch forth upon her

* See Appendix.

career of devastation. It is only by repudiating the principles which were acted upon by the Executive Government of the United States, from 1793 to 1856, in the discharge of their neutral duties towards England, and of which she then claimed and received the benefit, and also the principles of their judicial decisions, that the justice of their claims for full indemnity for the depredations of this cruiser can be denied.

But, although "HISTORICUS" avoids any direct discussion of this question as involved in Mr. Lindsay's inquiry, he does not seem forgetful of it, but suggests a mode of disposing of it, which, if legitimate, might prove more satisfactory to his own countrymen than to the citizens of the United States who have been thus despoiled of their property; and that mode is, to admit that *England herself is the sole judge* whether the "Alabama" was or was not unlawfully equipped within her jurisdiction; and that "with [her] honest decision on any such question neither of the belligerents can have any right to quarrel or to question."

He says that "the English Government must decide, on the best information at their disposal, whether she [the 'Alabama'] was or was not unlawfully equipped [in England] in breach of [her] neutrality;" "that their decision on this point ought to be final, for they are the sole judges of it; and the Federal authorities may inform their judgment, *but cannot question their determination.*" And he states, that "this was the course taken by the American Government in 1793; they determined what vessels were to be considered as having been illegally equipped within their territory, and these they compelled to depart."

The proposition, that England is the sole and final judge upon any question arising under her Enlistment Act or any other municipal law, would be undeniably true. But it is believed that there can be no reasonable pretence for holding, that, in so far as the transactions touching this

vessel involve any question to be determined by the law of nations, or any question concerning the just observance by England of her neutral duties to the United States, the latter can be bound by the decision of the Government of England, if at variance with the convictions of their own Executive. Nor can there be any reasonable pretence for maintaining, that, in reference to any such issue, the Government of the United States is not as competent to decide whether this vessel was fitted out in England, or within her jurisdiction, for a hostile enterprise against the United States, contrary to the laws of nations, and in violation of the laws of neutrality, requiring the Government of England to treat it as such, as is the Government of England itself. Any other doctrine leads to the manifest absurdity of constituting England the exclusive and final arbiter in her own cause of the principles of the law, upon which both parties have an equal right to judge, and of her own fidelity or infidelity to them. England, of course, must decide in the first instance; but she does so in deference to a code, in the construction of which the United States is her compeer and equal in judgment; and, if they differ, the question must be determined as all other debatable international controversies must be, — by surrender or compromise, arbitration or war.

The course referred to by "HISTORICUS," as pursued by the United States in 1793, was the natural and necessary one in the first instance, and has no tendency to prove the proposition which it is adduced to support. If England or France had complained that other vessels had been unlawfully equipped, but not thus ordered to depart, and the Government of the United States had declined further interference, because it claimed to be the exclusive judge in the matter, and those powers had acquiesced, the precedent might have been of some authority; but, as it stands, it proves nothing one way or the other.

One word here in reference to the Enlistment Act as one of

the means possessed by England to enable her to discharge her neutral duties towards the United States.

No sound distinction can be taken between the credit to be given to the judicial decisions of the United States on the subject of the law of nations, and the credit due to their decisions on the Enlistment Act; this being in almost exact correspondence with the Enlistment Act of England, which was confessedly taken from it, with a few amendments only.

These statutes, in both countries, were passed solely for the purpose of enabling each to discharge its neutral duties according to the universal law of nations, and they must be construed solely to that end; and the more enlightened any tribunal may be for ascertaining and applying the principles of that law, the better fitted it must be to put a true construction upon these Acts. Besides, England, *as a belligerent, has always claimed and always enjoyed, to the fullest extent, the benefit of the construction put upon the American Act by the Executive and the Courts of the United States.* She adopted it substantially as her own, after full and long experience of such construction in her favor; and therefore, upon every principle of honor and good faith, and so far as a nation can be, she should be considered to be legally bound to put the same construction upon it, when called upon to perform her duties as a neutral. *Having claimed and enjoyed the benefit of this construction, she is estopped to deny its soundness.*

It is true that the Enlistment Act is merely a means of enabling her Executive to discharge her neutral duties; and that any particular violation of it, so far as the Act itself is concerned, is a municipal offence only, which she alone can punish, and the punishment of which no foreign nation can interpose to enforce. But when such a violation is also a breach of the Law of Nations, or is designed for committing such a breach against a friendly power, the Enlistment Act must be considered as one of the means or facilities she possesses for enforcing the observance of her neutral duties and

obligations. And if her executive officers carelessly, negligently, or designedly omit to enforce it, and any violation of her neutral duties, and of the corresponding rights of a friendly belligerent, takes place, which, by due diligence in the use of these means, might have been prevented, she is clearly and indisputably guilty of "culpable slackness or indifference," negligence and carelessness, disregard of duty, or something worse; making her justly liable for all consequences.

And surely no one, looking at the proceedings of the American Executive and the decisions of the American Courts from 1793 to 1856, and applying the principles by which they were regulated to the undeniable facts in the case of the "Alabama," can doubt, that, upon far less evidence than that above alluded to in relation to that vessel, she would have been seized and libelled long before her entire readiness for departure, if not before she was launched; that the parties concerned in building and equipping her would have been indicted; and that the principal criminal would have been reduced to utter his boast of participation in offences alike against the laws of his own country and the law of nations, behind the grating of a prisoner's cell, instead of audaciously vaunting them in the House of Commons, which he has so conspicuously disgraced and degraded.

If, therefore, we take both of the propositions which "HISTORICUS" in this letter has laid down as the true basis of the discussion; namely, first, that, if there be "a culpable slackness or indifference" in the Executive of a neutral nation in not preventing her soil from being made the base of hostile operations against either belligerent, it may "be justly regarded by the injured belligerent as evidence of *a fraudulent neutrality, which he would be entitled to construe as a connivance at and participation in the schemes of his enemy;*" and that "such conduct would amount to *an alliance or complicity with the enemy, equivalent to hostility, and justly treated as such;*"

and, secondly, that the principles for the decision of the question are to be found in the early records of American statesmanship and American jurisprudence; and if we then apply those principles to the undeniable facts, the conclusion seems irresistible, that the United States may justly and lawfully claim of England full indemnity for all the losses which her citizens have sustained from the depredations of the "Alabama," and of any other vessel against which the like proof may be obtainable. It is to be remembered, that this question, whether the English Government has or has not been in default, does not depend in any great degree, and much less does it depend entirely, as seems to be sometimes supposed, upon the construction of her Enlistment Act. Her duties as a neutral nation, and the rights of the United States as a belligerent, are not to be determined by wire-drawn and hair-splitting constructions of one of her own municipal statutes. This was not the principle adopted by the Government of the United States in 1793, when invoked by England to protect her commerce from depredation by French privateers fitted out in American ports. That Government held, that "to commit murders and depredations on the citizens of other nations, or to combine to do it, was as much against the laws of the land as to murder or rob, or combine to murder or rob, their own citizens; and as much required punishment, if done within their limits, where they had territorial jurisdiction, or on the high seas, where they had personal jurisdiction, that is to say, one which reached their own citizens only; this being the appropriate part of each nation on an element where each has a common jurisdiction." *

The fitting-out of vessels for hostile purposes against a friendly nation, or combining to do so, or taking any part therein, was therefore held to be an offence at common law; and vessels were seized, and persons prosecuted, for such

* Amer. State Papers, p. 147; Letter of Mr. Jefferson to M. Ternant, May 15, 1793, pp. 154–5; Letter from same to M. Genet, June 17, 1793.

offences, before any Enlistment Act existed. This is the great and leading principle to be found in "the early records of American statesmanship and American jurisprudence." If the English statute is so imperfect and uncertain as not to afford her courts the means of enforcing observance of the law of nations within her territories, it is her own fault, but it does not relieve her from one jot or tittle of her obligations to any nation injured by a violation of it. The duty of complying with the law of nations is primarily upon the Government of each nation; its means of doing so is exclusively its own affair. If these means are competent, they must be used; and, if they are not, the nation must make full indemnity.

Having thus attempted to supply an element in the discussion, of essential importance to any just consideration of the subject, but one which seemed to have been substantially omitted, I propose in the next Number to consider the question of England's liability for indemnity on the theory which "HISTORICUS" appears to consider the only one applicable, and also under other aspects, of no less interest.

1 MARCH, 1864.

II.

But, if we were to allow that the theory discussed by "Historicus" is the only one applicable to the case, — namely, that if a vessel be unlawfully equipped within the territory of a neutral State, and escape without negligence or default on the part of the Government, and become clothed with a regular commission issued by the belligerent, the whole duty of such State is confined to restoring any prizes which she may bring within its jurisdiction, prohibiting her entrance into its ports, and compelling her immediate departure, should she presume to enter one, — if we were to allow this, it nevertheless seems impossible to acquit England of a dereliction of duty, of the gravest character.

For, whatever may be said or thought about the innocence or default of the Government in the matter, the proposition that the "Alabama" was unlawfully equipped, and constituted a hostile enterprise against the United States, fitted out from the territory and under the jurisdiction of England, seems, upon facts admitting of no denial, too plain for argument or question.

That she was built in the harbor of Liverpool by British artisans, and of British materials, on contract for the Rebels, and confessedly for a ship of war, pierced for twelve guns; — that she was there completely fitted for sea, and for an immediate cruise, in all things but her armament, ammunition, some few stores, and a few of her officers and men; — that she was manned with a crew of about seventy men

almost exclusively British seamen, a very large portion of whom *were enlisted and taken on board before she left the English waters;* — that her armament and ammunition were all made and prepared for her in England, and sent out to her with some of her officers (a large part of whom were also English) from English ports, in vessels under the English flag, to be put on board with her commander at a place of rendezvous out of reach of any other national interference; — that the transfer of them was made under the standard of England flying over all the vessels, until that at the peak of the "Alabama," after the combination was completed, was hauled down to give place to the Rebel flag; — that she then started on her cruise, with the "English St. George at the fore"; — that she never entered a Rebel port, nor any other than an English port, with one exception only; — and that she has been now cruising (plundering, burning, and destroying American commerce, with occasional piracies upon English commerce also) for nearly two years, and has procured all her supplies and repairs, to enable her to keep the sea, in English ports, — these are facts patent to the world, and not susceptible of denial.*

If all this does not constitute an unlawful fitting-out of a hostile enterprise against the United States, within the jurisdiction of England, and in violation of her neutrality, calling upon the British Government to interpose a prohibition to this vessel from entering her ports, however innocent that Government may have been of carelessness or neglect in regard to her original equipment and escape, it seems not only difficult to imagine one, but altogether useless to attempt it; for, if this be not a violation of impartial neutrality, the pretended law imposing it is of no practical value, and may as well be

---

* Our Cruise in the Alabama. Cape Town, Sept. 19, 1863. — Official Correspondence respecting the "Alabama." — Depositions submitted by Mr. Adams to Earl Russell.

at once dismissed from the code denominated the Law of Nations.

It seems incredible that England, in contemplation of the use to be made of this precedent, in the United States and elsewhere, in any future war she may have with any power however humble, or with China or Japan, or with insurgents in her own domains, whom the United States, in imitation of her example, may acknowledge as belligerents, can for a moment give to it her sanction, as being consistent with the law of nations or her neutral obligations. Admission of the error, and compensation for its consequences, would be a small price to pay for the exemption of her commerce in future wars from the destruction, which the following of the example by neutral States (with the usual "bettering of the instruction") would be sure to inflict.

But, *in so far as the action of the Executive is concerned*, this question of the unlawful equipment of the "Alabama" was settled at the time of her escape, by the order issued for her seizure; which order failed of effect only because of seasonable information to her officers that it was on the way, as one of them now publishes to the world.

By a reference to the correspondence between Earl Russell and Mr. Adams, it will be found that the Government refused to interfere in any case, unless upon satisfactory evidence, in legal form, of unlawful equipment, and the opinion of the law-officers of the Crown of the sufficiency of the evidence to warrant an arrest on that charge; and it will also be found that this order was not given until such evidence and opinion had been obtained.*

It is true that the intended arrest was for the purpose of submitting the question to judicial decision, and that this was rendered impossible by her escape. But that event did not terminate the duty of the Government in the matter. It was

---

* Message and Documents, 1862–3, Part I.

still bound to exercise its authority in vindication of the violated neutrality, and in observance of the neutral obligations of the State. The nature of that duty is well stated by "HISTORICUS." He says, that, in all cases where judicial cognizance cannot be obtained, "the neutral Government must, *according to the best information it can obtain*, form a judgment on this as on any other matter of State, *and act upon that judgment.*"

Now, the Executive had obtained such information, and also the opinion of the law-officers upon it, which had satisfied them that this vessel had been unlawfully equipped, and was liable to seizure and confiscation for that reason. Every subsequent development must have given strength to the conviction; and particularly the fact, that she ran away without any register or clearance, *in itself a conclusive admission of her illegal character.*

That the English Executive recognized a continued obligation in the matter, is evident from the orders, which, they informed Mr. Adams, they had subsequently sent to arrest her at Queenstown and Nassau; *which places, however, she never visited.*

Now, if these orders were called for by a sense of neutral obligation, on the conviction of the Government that this vessel had been unlawfully equipped, a further order, prohibiting her from access to any English port, and directing her immediate departure if she presumed to enter one, was certainly no less called for.

Why, then, has no such order been given?

It is hazarding nothing to assert, that, if the British ports on this continent and in the islands of the Atlantic had been closed to the "Alabama," her ability to keep the sea, and to extend her cruises to the South-American coast, would have been greatly crippled and diminished, if not entirely destroyed; and that her consequent restriction, for refuge and supplies, to the few ports which would have been left to her, would have enabled our Government to watch them, and sub-

stantially close them to her by cruisers lying off and on, but without the limit of territorial jurisdiction; thus rendering her capture or destruction in the highest degree probable. And still less could she have ventured round the Cape of Good Hope, and into the Indian seas, if the English ports there had been closed to her; there being none other easily within reach, or none which could not have been sufficiently guarded by United-States cruisers to render them substantially inaccessible. But at the Cape, if the reports are to be relied on, not only did she find a most hospitable welcome from the whole people, including the highest officials, but, presuming probably upon the safe distance, her commander carried in a prize, and proceeded to a quarter-deck condemnation of it within English territory.*

Why, then, has the Executive of England refrained from this prohibition, apparently so reasonable and just in punishment of an outrage upon her own neutrality, and so evidently demanded by her neutral obligations to the United States? — obligations all the more imperative in view of the fact, that this vessel was equipped and sent out, and is now manned, by her own subjects, who are thus morally guilty of piracy upon the commerce of a friendly nation.

It cannot be pretended that here was a violation of a merely personal right, which England was at liberty to assert or dis-

---

* In the recent debate in the House of Lords, Feb. 16th, Earl Russell distinctly admitted that the case of the "Alabama" was "a scandal, and in some degree a reproach, to our law." And "HISTORICUS," in his letter in the London "Times" of the same date, alluding to the same admission in one of the Earl's previous despatches, says: "I submit, that vessels, of which such a statement can be properly made, — and that it was properly made, no one acquainted with the circumstances of their outfit and manning can honestly doubt, — are not entitled to the hospitality of the country whose laws they have eluded and abused. I think that to deny to the 'Florida' and the 'Alabama' access to our ports would be the legitimate and dignified manner of expressing our disapproval of the fraud which has been practised upon our neutrality. If we abstain from taking such a course, I fear we may justly lie under the imputation of having done less to vindicate our good faith than the American Government *consented, at our instance, on former occasions to do.*"

The report of that debate and this letter of "HISTORICUS" were not received here until after these papers had been placed in the printer's hands.

regard at her pleasure, and that the belligerent who suffers loss by her omission to exercise it, has, therefore, no lawful cause of complaint; or that her duty in this case is in the nature of an imperfect obligation, like that of courtesy or gratuitous benevolence, which, however obligatory in good manners or elevated morals, are not matters of legal right. This obligation of a neutral nation to prohibit asylum to cruisers unlawfully equipped within her territory is of the same nature and origin with the obligation to restore prizes made by them, if brought within her jurisdiction. Such prohibition is part and parcel of the same duty, imposed by the law of nations; and it cannot be dispensed with or waived, consistently with a just regard for neutral fidelity, any more than could be the obligation of surrendering such prize,—which has never been denied to be absolute. It is, indeed, but the completion or carrying-out of the original obligation to prevent the equipping of vessels in neutral ports for hostile expeditions against a friendly power; which would be obviously imperfect, and to a great extent nugatory, if vessels guilty of such violation, and escaping, should be afterwards permitted to return to enjoy the benefits of their crime in the ports of the country whose laws they had violated.

The United States have, therefore, the same right to demand this prohibition that they would have to demand the surrender of a prize carried by the "Alabama" into an English port; and England is as justly amenable for all the consequences of withholding the prohibition as she would be for withholding the restoration of such a prize.

It may be impossible, indeed, to ascertain the exact extent of the damages sustained by citizens of the United States, which such a prohibition, seasonably issued, would have prevented. That its moral influence, applied to the "Alabama," and also to the "Florida" and the "Georgia," as with equal justice it might have been, in discouragement of these and similar enterprises, would have been very great upon the belligerent

position of the rebels in their own eyes, and in the eyes of the world, — and that a very large part of the plunderings and burnings of American property which have taken place might thus have been prevented, — cannot be reasonably questioned.

But the omission to issue and enforce the prohibition is of greater moment in another aspect. If, as "HISTORICUS" concedes, mere "*culpable slackness or indifference* in the Executive" of a neutral State, in not "preventing its soil from being made the base of hostile operations against either belligerent" by the equipment of cruisers within its territory, is "justly to be regarded by the injured belligerent as evidence of a fraudulent neutrality, which he would be entitled to construe as a connivance at and participation in the schemes of his enemy;" and "would amount to an alliance or complicity with the enemy, equivalent to hostility, and justly treated as such;" — assuredly a voluntary omission on the part of such neutral State, after full knowledge that the offence has been committed, to issue and enforce the prohibition, which is prescribed by the law of nations, and demanded alike by self-respect in vindication of her violated neutrality and by her duty to the injured belligerent, *and by the application of which alone the further use of her territory, as such base of operations, could be prevented*, must be accounted an alliance or complicity with the enemy to that extent equivalent to hostility, no less clear, and of no less grave importance.

And, if complicity or alliance with the enemy be thus established, it certainly would be in accordance with reason and the law of nations to hold the neutral responsible for all the consequences resulting from the escape and subsequent depredations of the guilty ship.

Upon the hypothesis, therefore, which "HISTORICUS" seems to have considered the only one worth discussing as applicable to the case, it is believed that the claims of the United States for full indemnity may be safely rested.

3 MARCH, 1864.

III.

THERE are other grave causes of complaint, upon which it is believed that these claims may be most equitably and justly asserted, but upon the discussion of which "HISTORICUS" has not seen fit to enter. He does not, indeed, seem wholly unaware of them, but rather disposed to look upon them as unimportant obstacles, which may be conveniently bridged over by a general principle, or kicked out of the way as "pieces of ignorant rubbish," in his strides to his desirably comprehensive conclusion.

The premature acknowledgment of the rebels as belligerents at sea, and the continuance of that acknowledgment notwithstanding their entire want of any port into which they can carry a prize for adjudication, or into which one of their ships of war can enter for supplies or repairs; — their violation of the settled law and usages of nations, in destroying, without trial or adjudication, all prizes captured (embracing occasionally piratical destruction of British property); — the impunity with which the "Alabama," after escaping the orders for her arrest, and after the world-wide knowledge of her origin and history, has been and is flaunting the Rebel flag in every British port which she chooses to enter; the military salutes paid to that flag; — the official visits and feastings of the colonial magnates; — the aid and comfort afforded in supplies, repairs, and outfits, making those ports her sole base of operations against the United States; — and various other significant demonstrations of English popular and official

sympathy in the cause of the Rebels, the chief source of their daring and of their ability to keep the sea, — all these things, so obviously inconsistent with a true and impartial neutrality, could not be quite ignored; and it is to be regretted that an author of the learning and ability of "HISTORICUS" should not have entered somewhat carefully into a consideration of them, instead of assuming to pass upon or over them in the summary manner he does.

The general principle he apparently relies upon as disposing of these matters to a greater or less degree, but how extensively does not precisely appear, is that which is numbered "One" in the Letter, and is stated as follows: That "a cruiser bearing the commission of a recognized belligerent, in all other places than those within the neutral jurisdiction where she was unlawfully equipped, . . . is a lawful vessel of war, the conduct of which no one has a right to question, and with whose prizes no one has a right to meddle;" — that "she is covered by the immunity of the flag she bears;" — that, "if an English man-of-war were to meet the 'Alabama' upon the high seas where the English Government has no jurisdiction, she could see in her nothing but the lawfully commissioned cruiser of a recognized belligerent, over whom or whose prizes [England] has no control, *and for whose acts* [*she*] *therefore has no responsibility*." And, further on, he reaches the conclusion, that while her prizes, if brought within the jurisdiction of the neutral nation, may be restored to the owner, and she may be forbidden to enter any of its ports, or ordered to depart if appearing there, this is "the only way in which a neutral State can assert and vindicate its violated neutrality, short of diplomatic action or actual hostilities."

That this is the general rule concerning the immunity of the flag of a foreign nation, existing as such in her own right, independently of any acknowledgment by the neutral, — the rule governing courts of justice, and military and naval

officers, — is doubtless true. But as this immunity is founded entirely on the comity of nations and the implied consent of the neutral, for the preservation of public peace, which might otherwise be dependent upon the decrees of courts or the action of military or naval officers, it may be revoked or rescinded for good cause at any time by the neutral Government, when justice and sound policy demand such revocation, even where such flag is that of an established nation.*

If an acknowledged belligerent were to forcibly seize an English vessel lying in an English harbor, and, taking her beyond the territorial limits of England, were to arm her, and clothe her with a regular commission to commit hostilities against his enemy, and were to claim immunity for her because she was under his flag, and she should afterwards be found in an English port or on the high seas, it is not to be credited that the English Government would admit the immunity of the flag, or wait for diplomatic action, or a declaration of war, before seizing her. No one will question that the Government would order her immediate arrest, and her restoration to the owners, wherever she might be found; leaving it to the belligerent to decide whether it should be cause of war between them. And the manner in which the "Alabama" was built, equipped, and armed by the subjects of Great Britain, and sent forth from under her jurisdiction, manned by her own seamen, to plunder the commerce of a friendly power, though a less flagrant insult, was a not less gross violation of her neutral rights and obligations, and was one which would have fully justified the seizure of the vessel, whenever again found upon English territory.

Another and urgent reason calling upon the Government of England to withhold all regard for the immunity of the Rebel flag is the insulting and piratical use made of her own by the Rebel cruisers in decoying *and capturing* American vessels, in

---

* The Schooner Exchange *vs.* McFaddon and Others, 7 Cranch's Rep., p. 116.

direct contravention of the spirit, if not of the intent, of her Statute 17 and 18 Vict., ch. 104, § 103; which renders any use of her flag, by any person on board any vessel owned by any person not entitled by law to own British ships, for the purpose of making such ship appear to be a British ship, an offence causing her forfeiture; unless such use of the flag were made for the purpose of escaping capture by an enemy, or by a foreign ship of war in the exercise of some belligerent right. It appears by the Journal of an officer of the "Alabama," that she not only thus habitually used the English flag to decoy and deceive vessels which she sought to capture, *but kept it flying until the boarding-officer had gained their decks;** thus violating one of the fundamental laws of nations, which, although allowing to a belligerent such deceptive use of the flag of another power for the purpose of decoying or deceiving the enemy, *denounces any act of hostility under it as piracy.*

Little, if any thing indeed, seems wanting to make the "Alabama" in substance a British pirate, — built, equipped, armed, and almost wholly manned, by Englishmen, in English ports, or under the protection of the English flag, and actually capturing her victims under its folds, and all the pecuniary emoluments from the captures, except a small fraction, going into English pockets; — a pirate, the suppression of whose depredations is demanded of England, not less by a regard to her own honor than by her duties of neutrality and good-will towards the United States.

Another class of complaints made by the United States, and upon which also they rest their claims for indemnity, is founded upon the premature and continued acknowledgment of the rebels as a maritime belligerent, notwithstanding the fact that they have not, and never had, any port into which they can carry a prize for adjudication, or take one of

---

* Our Cruise in the Confederate Steamer "Alabama," p. 9.

their ships for repairs or supplies, to enable them to keep the sea; and their consequent open violation of the law of nations in destroying all prizes in mid-ocean. "HISTORICUS" denounces these complaints as "a piece of ignorant rubbish," and undertakes to dispose of them in a very summary and dictatorial manner; which, however satisfactory to himself, leads to great doubt, to say the least, whether he has comprehended the nature and full extent of them or of the positions he impugns.

His only reply to them is, "that the rule of bringing a captured vessel before a prize court is introduced in favor of neutrals, and not of belligerents. Whether the belligerent captor shall bring a *neutral prize* before the prize court, is a question between his Government and the neutral Government. Whether he shall bring in a confessedly *belligerent* prize before a prize court, is not a question between him and the adverse belligerent, who has no rights at all, but between him and his own Government." Now, if all this were admitted to be true, it is nevertheless no answer.

The United States do not thus complain (as "HISTORICUS" by this answer implies) against the Rebels because they thus destroy vessels at sea belonging to citizens of the United States, instead of taking them into port for adjudication; or that any rights of the United States are thus violated, which they could maintain before a court, if the prizes were taken before one for trial; it being clear that the United States could have no standing in a regular prize court of the captors, in any such trial. Nor would they consider themselves as having especial cause of complaint against England simply because of her omission to interfere in vindication of the law of nations, if the vessels of citizens of the United States had been thus destroyed at sea, without adjudication, by the cruisers of an enemy that was a previously *established nation*, existing as such in its own right, and not merely a belligerent acknowledged for the occasion and

existing as such only by the sufferance of other nations, — and if there were no especial reasons for such interference.

But the complaint which the United States make *is against England as a neutral*, because she not only *voluntarily recognized, but continues to recognize*, these Rebels as a maritime belligerent, *when they are, and from the beginning have been, without legal capacity to act as one, according to the law of nations*, they having no port into which they could take a prize for the application of that fundamental rule which renders the adjudication of a prize court essential to any right of the captors to dispose of it; and such recognition being the chief if not the sole source of their power and opportunity to roam the seas for the plunder and devastation of American commerce; — and also because she does not revoke that recognition, which it is alike her right and her duty to revoke, not only by reason of these continued and defiant violations of the laws of nations, upon an implied obedience to which it could alone have been justly or honestly made, but also by reason of the piracies upon her own subjects consequent upon those violations, which her good faith to the commercial world, as well as self-respect, calls upon her to punish and repress; — and, still further, because these violations have been and are perpetrated mainly by her own subjects, in vessels built, fitted out, and armed on English territory, or under the protection of her flag, and greatly to their emolument and her commercial aggrandizement.

If, then, these positions taken by "HISTORICUS" would be a sufficient answer to a claim for indemnity made by one of two belligerents upon a neutral for omission to interfere for the enforcement of a law of nations, in a case where both were equal, independent nations, and there had been no violation of that law by the captor of the prize, excepting as between him and his adversary, or none of which the neutral was under peculiar obligations to take notice (which, however, is not conceded), — they nevertheless entirely fail to be an answer

in this case. For here the war is between a long-established friendly nation, invested with all the recognized rights and attributes of national sovereignty, on one side, — and insurgents against its authority, merely acknowledged as a belligerent power, with no recognized *status as a nation*, and with no national rights or attributes but those recently conferred by the neutral, *and revocable, for good cause, at her pleasure*, on the other side; — in which war such belligerent, instead of availing himself of that acknowledgment for the enjoyment of the national rights and privileges which he might lawfully claim while acting in obedience to the laws of nations (which rights and privileges alone could be lawfully conferred or intended by such acknowledgment), abuses and perverts it for the open and avowed disregard and violation of those laws, and a lawless and piratical abuse of the neutral's flag. And still less do the positions of "HISTORICUS" meet the case where the neutral not only has the right, and is under the general obligation, to vindicate the sanctity of those laws, but is under a peculiar duty to do so, because such violations have involved the destruction of the property of her own citizens in deeds of piracy, which call upon her, in vindication of her own majesty and of the rights of her own subjects, to pursue and punish the aggressors as piratical outlaws. And least of all do his positions afford any answer, where these violations of the laws of nations and these piracies are perpetrated, not by subjects of the belligerent, in surreptitious and subtle evasion of the cognizance or interposition of the officers of the neutral power, *but mainly by its own subjects, building, equipping, arming, and manning these piratical vessels*, and taking the lion's share in the profits of their depredation upon the commerce of a friendly nation; which depredation serves not only to destroy a corresponding amount of the wealth of that friendly nation, but also vastly to augment the neutral's own commercial interests, by the monopoly which it tends to secure to her shipping. All these outrages

upon the law of nations, and upon her own sovereignty, and the immunities of her own people, she could by a word lawfully and honorably prevent. But, instead of uttering that word, England still extends to these violators of law and humanity the hospitality of her shores, her dock-yards, and her naval resources; thus furnishing to them — what they could by no possibility have within their own territories — a base of operations at sea, their chief and, for a while, their only one.

No one can doubt, that, if England considered it for her interest to revoke her recognition of the rebels as belligerents at sea, she would instantly do so, and drive their corsairs from the ocean; and that the whole world would justify, if not applaud, such a procedure.

No one can deny, that if the "Alabama," thus built, equipped, armed, and manned by her subjects, and combined within the jurisdiction of her territory, or under that of her flag, thence to launch upon her career of devastation, without ever having entered a rebel port, had been so by her consent, connivance, or "culpable slackness or indifference," England would stand before God and the nations of the earth justly chargeable with all the consequences to the United States, as an accomplice in the war against them. And how is she less amenable, if, with not only a perfect right to suppress this power of depredation, but also a clear obligation to do so in justice to her own dignity and security, and in vindication of laws which she, more than any other nation on earth, is interested in preserving sacred, she nevertheless suffers the outrages to be perpetrated, and directly or indirectly affords the means of their continuance?

These are elements of the question of indemnity between England and the United States which "HISTORICUS" ignores or overlooks in the discussion of it, or seeks to put aside; but they are not to be disposed of by a sneer, or by dictatorial assumption from any authority however high. They are

essential to its full consideration and right decision, and are such as neither public justice, nor the world, nor history will overlook or ignore, when their verdict shall be to be rendered.

7 March, 1864.

IV.

But there is another and broader view of this subject, not to be disregarded in the present agitation of men's minds upon the general subject of international law, and in the opportunity afforded of invoking that attention to it which its acknowledged imperfection and incompleteness demand.

An imperative duty rests on every nation to enforce the so-called laws of nations whenever they are infringed within its own jurisdiction, or in violation of its own majesty or rights, or under circumstances presenting a peculiar opportunity for their enforcement or vindication, *from the necessity of the case, as the only means of asserting their authority, and maintaining their otherwise imperfect obligation.*

There is, in truth, no such thing as the law of nations, in the ordinary acceptation of the word "law," as predicated of earthly government; nor any means of enforcing it, beyond the power and determination of each nation to vindicate and defend itself from the violation of those rights, which, upon obvious principles of morality or of self-preservation, or by established usage, nations have agreed upon, or may be presumed to have assented to, as constituting such a law.

A law, in the ordinary use of the word, implies not merely a rule of right, and a corresponding obligation, but also a power from which it emanates, able and prepared to enforce it; but among nations there is on earth no such common lawgiver, arbiter, or executive magistrate. The law of nations, although essentially of perfect obligation, rests only upon the

eternal principles of all moral law, established by the King of kings, who, we know, will not suffer any nation, however powerful, to violate it with ultimate impunity. The world is but just emerging from a state of barbarism as to any just observance and vindication of it. The violation of a nation's acknowledged sovereignty or rights, merely as such, is rarely, if ever, made a common cause for interference by other nations, only because of such violation. Some peculiar individual interest of the nation appealed to must be affected, or some peculiar national danger to itself must be apprehended by it, before aid or interposition can be successfully invoked or anticipated for the relief of the injured, or the punishment of the aggressor.

The history of national law is full of the grossest violations of its clearest obligations by powerful nations oppressing weaker ones, with no general uprising of the rest; nay, without even a protest against the wrong. A decent regard for the opinion of the world, which has its useful but superficial influence upon nations as well as upon individuals; the natural respect for right, and abhorrence of wrong, which bad men feel as well as good; and the fear of future retribution in some near or distant future, when the positions of the parties may be reversed, — serve to keep national governments in a general respect for each other's rights. But no nation has yet been found capable of resisting the temptation to trample on the weak, when a strong interest or feeling prompted it, and present impunity could be reasonably hoped for.

If the perplexities and agitations on the subject of national relations, rights, and duties, which the present Rebellion has given birth to, shall have awakened nations to a more distinct perception of the necessity of better means for enforcing their mutual obligations, to a higher sense of international morality, and to the taking of corresponding measures towards the establishment of some system for making obedience to

acknowledged laws a condition of the continued enjoyment of the rights conferred by them, — another great blessing, in addition to those of the extermination of slavery, and of a sublime illustration of the vital strength and energy and soul-inspiring influences of republican government, will be among its Heaven-sent fruits.

But, in the present condition of the world, the only means of vindicating or enforcing national law are to be found in the duty and ability of each nation to insist upon the observance of it so far as its own interest or its sovereignty is concerned. Any nation, therefore, that voluntarily submits to an infringement of the laws against its own majesty or the rights of its individual citizens, which it has the power and opportunity easily to punish or repress, is not only guilty of dereliction of duty to itself and to them, but is recreant also to its obligations to the rest of the world, and faithless to a high national trust.

It is obvious that acquiescence in such wrong, where the ability exists to punish and prevent it, cannot be for the interest of the injured nation, if its relations to the wrong-doer be alone considered; and if the acquiescence be for the purpose of enabling the offending power more successfully to carry on war with another and a friendly nation, or to preserve unimpaired its means of doing so, — whether from motives of self-interest, or of jealousy or ill-will towards such nation, or from sympathy with the offender or his cause, or from "culpable slackness or indifference" to national obligations, — it is difficult to perceive why such acquiescence does not amount to moral complicity in the war, justifying retaliation, and claims for indemnity. There can be no substantial moral distinction between affording direct aid and comfort to the enemy, and permitting his violation of acknowledged laws and his trespasses upon individual and national rights for the sake of increasing his resources or preserving them unimpaired, — or being willing thus to aid him in his cause, whatever may be the motive.

Now, this seems to be England's position: —

She acknowledged the Rebels as a belligerent power, at sea as well as on land, before she knew, or could know, that they would ever have a ship afloat, or could send one from any port within their own territories.

She knows, as all the world knows, that they have not had, and have not now, a single port of their own which they can make a base of hostile operations against the United States for the building or equipping or refitting or supplying of cruisers, or into which they can bring a single prize for adjudication.

She knows, that several powerful ships of war, now ranging the ocean for the destruction of American commerce, were built, equipped, and manned by her people for the Rebels, in her ports, or under the jurisdiction of her flag, in violation of her neutrality; and that they have made, and must always be making, her ports their principal base of operation.

She knows, that, in making their captures, they constantly approach their victims under her flag, thus alluring them to destruction, or diminishing their chances of escape, contrary to the spirit of her laws; and that they have actually made, if they are not now making, captures under its very folds.

She knows, that the chief, not to say the almost entire, pecuniary profit derived from these captures, and from the destruction of the prizes, passes immediately into the pockets of her own subjects, in the compensation paid by the Rebel government to the capitalists and hirelings engaged in this piratical service; which service at the same time is pouring a vast tide of wealth into the midst of her commercial classes, by transferring to British vessels the carrying-trade hitherto employing vessels of the United States.

She knows, that these cruisers are constantly and avowedly violating some of the most sacred of the laws of nations in burning and destroying ships and cargoes at sea, without trial or adjudication, and to such an extent as occasionally to lead

to the piratical destruction of cargoes belonging to her own people, for the sake of destroying the vessels in which they were borne.

She knows, by the proclamation of the Rebel chief, and his so-called Secretary of the Navy (a navy which has no existence at sea but in vessels built, equipped, armed, and manned by her subjects, and in her ports, or under her flag), that these vessels were thus built and equipped by the authority of, and under contracts with, the Rebel government; and that several others were in like manner contracted for, and were nearly ready for sea; — constituting one of the grossest and most insulting violations of her neutral rights by the Rebel government itself which any belligerent could commit.*

She now knows, from the official statement of the same so-called Secretary of the Navy, that a yet more outrageous violation of her neutrality on shore, — in the organization by the Rebel government of a military expedition in her territory, to be composed principally of her citizens, under the command of Rebel officers, for the capture of Johnson's Island, a portion of the territory of the United States, — was designed, fully prepared, and about ready for execution; which a timely discovery alone prevented.†

She knows, that a revocation of her acknowledgment of the rebels as a belligerent at sea, and the exercise of her power to repress these outrages, would put an instant stop to them; and that such revocation, in view of these outrages, would not only be perfectly just, and without cause for complaint on the part of the insurgents, but would meet the approbation of the civilized world as an honorable and righteous vindication of the sanctity of the law of nations.

She knows, that it cannot be for her interest to suffer, and thus to encourage, these outrages upon the general

---

* See Appendix. † Ibid.

law, upon her own neutral rights, and upon the property and rights of her subjects, and these insults upon her own sovereignty, if her relations with the Rebels are alone considered; for no nation has more at stake in protecting neutral rights than England, when at peace.

Until, therefore, she can show some controlling and justifying necessity which induces her submission to these outrages and indignities, or some explanation, other than that of sympathy with the Rebels or their cause, of this apparent slackness or indifference as to the obligation of a just vindication of the law of nations, and of her own security and self-respect, — until she can do this, she is, in conscience and in law, justly amenable as an accomplice with the perpetrators.

It seems quite clear, that, if it is justifiable thus to recognize or continue the recognition of a power as a belligerent at sea which has no port from which it can send a ship of war, or in which it can fit out or equip one, or into which it can take a prize, the same reasons will render it equally justifiable to acknowledge any inland nation, having no seaport whatever, as also a belligerent power at sea, and thus to enable her to cruise and plunder, burn and destroy, upon the ocean, with vessels built, armed, equipped, and manned by neutrals thus acknowledging her belligerent rights, and to act from bases of operation furnished by these neutrals in their own territories. How long such a system would be tolerated by England, if herself the opposing belligerent, it needs no spirit of prophecy to foretell.

And how far this falls short of complicity with the rebels, or with what pretence of propriety or good faith any nation thus recognizing, and continuing to recognize, such a power as a belligerent at sea, can hereafter claim of the Government of the United States its interposition to defend her from similar assistance to her enemies, remains to be seen when the day of trial shall come; though, as Americans, proud of our national history on the great subject of neutral relations, we may hope

that higher principles may overcome the natural impulse to retaliation, and may enable our country to maintain her position then as far in advance of England's upon the subject of neutral good faith, as it hitherto has been.*

9 March, 1864.

---

* The enormous profits of the carrying-trade already thus diverted from American to British shipping, — the continuance of which diversion must be for a long time inevitable, and must be followed by injurious consequences from which the United States cannot for many years recover, — will very far exceed the whole value of the property destroyed for which indemnity could be claimed; so that England, in a pecuniary view, will have acquired and retained great wealth by reason of these inroads upon American commerce, even after making full indemnity to the individual sufferers.

V.

But, independently of the question of England's liability for indemnity as depending upon the interpretation of her neutral duties to the United States, or upon the consideration of the manner in which she has fulfilled or failed to fulfil them, there is another, and perhaps graver, view of her position in regard to these vessels of the Rebels, in which, but for recent manifestations of a change in the policy of her Government concerning them, apprehensions might well be entertained that the two countries would very soon become involved in the most painful and disastrous complications.

It is obvious from the statements contained in our last Number, that, as the case now stands, the only naval warfare against the United States, carried on in the name of the Rebel government, is, in substance, one carried on by the capitalists and seamen of England, in vessels supplied from her territories, generally using her flag as a decoy, and sometimes in actual captures, and her ports as their base of operations; and the whole pecuniary emolument of this war (one of enormous value to her) falls into her hands; in short, it is substantially a war on her part in every thing but the name.

It is further manifest, that, if these vessels have been thus furnished lawfully, and in consistency with the neutral duties of England, any further number may be so furnished, which the ability of the Rebels, or the interests of her mercenary capitalists and seamen, can supply, to go forth for the plunder

and destruction of what remains of American commerce, and the murder of American citizens, as occasion may require for the accomplishment of that purpose.

Nor is this a merely speculative apprehension. It is now proved, by official published documents of the Rebel government, that contracts for great and most important additions to the present fleet have already been made in England, by which it was anticipated that the blockade could be broken, our navy in a great measure destroyed, and our harbors and cities assailed, but the preparation of which has been recently arrested by orders of the English Government.*

Now, that all this can be consistent with an impartial neutrality on the part of a great commercial nation professing the highest principles of morality and public faith, proud of the scope and alleged perfection of her jurisprudence, and having the largest and most efficient navy in the world, is a proposition which must severely tax the credulity of all who attach any idea of practical applicability or of utility to the law of nations, by which the duty of such neutrality is imposed.

But, if this must be admitted to be so; — if neither the Government nor the people of Great Britain have been guilty of neglect or disregard of neutral duty or good faith in this matter, of which the United States can reasonably complain; — if England may still go on supplying other vessels of war, and receiving them into her ports, — the difficulty is by no means disposed of, but only removed one step further back. For the right of the United States, under the law of nations, resting upon the principle of self-preservation, remains, nevertheless, clear and indisputable, to prevent the supply of such destructive naval forces to their foe, who would be otherwise helpless upon the ocean; — to treat those who supply them as in alliance or complicity with him; — and forcibly to suppress

---

* See Appendix.

such aid, either by pursuing and destroying these vessels (not only at sea, but also in British ports, if their destruction cannot be otherwise accomplished), or by reprisals upon British commerce, or by a declaration of hostilities against the nation which thus suffers its citizens to carry on such a war against us, or to furnish the means for carrying it on.

No nation is bound to stand unresistingly quiet, and behold the means for its destruction furnished to its enemy by a powerful neighbor. The duty of self-preservation, lying at the foundation of all law, civil and national, if conflicting with an otherwise lawful right of trade, confers the right of preventing and repressing such aid by forcible resistance, with all the resources at command, including those of war, if needful for the purpose. Such aid, under such circumstances, however otherwise consistent with the law of nations, becomes substantially complicity or alliance with the enemy, and may be lawfully treated as such.

To what extent such aid must be carried, in order to justify recourse to arms by the injured belligerent against the neutral affording it, must depend upon its importance, and the peculiar relations of the parties; upon all which that belligerent is the sole judge, under a just responsibility to the law of nations and the moral sense of the civilized world.

Now, whatever opinions may exist upon the question, whether the assistance hitherto given to the rebels by Great Britain, in thus furnishing to them their only naval force, and in persisting to allow it to use her ports as its base of operations, amounts to a just cause of reclamation or war, there can be no doubt that any material augmentation of that force, especially by the supply of steam rams, of the construction the rebels had contracted for, would fully justify the United States in any measures, however hostile, which they might see fit to adopt for self-protection. For the only alternative would be, on the one hand, a tame submission to a

war in disguise, carried on by British subjects, under the Rebel flag, for the ruin of our commerce, the endangerment of our navy, the invasion of our shores, and the destruction of our nationality, — a war all the more dangerous from the impunity of the parties supplying the means for its prosecution; — or, on the other hand, the election of open hostilities in self-defence, which might not only afford opportunities for the prevention or suppression of these hostile enterprises otherwise unattainable, but opportunities also for compensatory reprisals upon English commerce, and, it might be, for eventual redress for all the injuries suffered from these enterprises.

No conviction is more deeply and universally impressed upon the American mind, than that the people of the United States have been and are most grievously wronged by England in her suffering these cruisers to be thus furnished to the Rebels, and allowing their continued use of her ports as their base of operations against the commerce of the United States, — a conviction which becomes quickened with every new account of outrage, and which, if deepened by further injuries of a like nature, must soon terminate in a bitter and enduring animosity, fruitful of future danger to the peace and friendly relations of the two countries, or must lead to open hostilities, as an inevitable necessity, in self-defence against a warfare no less deadly and ruinous because carried on under the guise of neutrality.

Happily there is good reason to hope that these imminent dangers may be averted; that a better understanding of the origin, nature, purposes, and probable results, of the Rebellion is beginning to prevail in the English mind and councils; that the subject of neutral duties, and corresponding belligerent rights, is receiving more careful consideration; and that the true relations between England and the United States will hereafter be better understood and appreciated.

It is not necessary to attribute the course pursued by Eng-

land towards the United States since the first breaking-out of the Rebellion, until quite recently, to *a settled design*, on the part of Government and the mass of the people, to aid in the destruction of our National Government and the termination of our national life, as is extensively, if not generally, believed; although such a theory might be very plausibly maintained, and will probably more or less widely and permanently prevail, and although such destruction would be unquestionably acceptable to very large portions, if not to the bulk, of her ruling and commercial classes. A less painful and more hopeful solution, but perhaps not more flattering to the pride of either party, may be found in the general and hitherto unimagined ignorance prevailing in England concerning the political institutions of the United States, which ignorance has prevented any approach to a just appreciation of the rights, duties, and power of the General Government in relation to the several States, and the people of them, — of the iniquitous origin, nature, and purposes of the Rebellion, — and of the impossibility of yielding to it, without the utter loss of national life. A further solution is to be found in a like almost total ignorance of the character of the people of the free States, and of their military, naval, and financial resources. From this seemingly wilful ignorance had arisen an absolutely universal conviction, and one most welcome to the ruling and commercial classes, that the days of the Republic were numbered, and its division into many minor nationalities was inevitable; — a delusion so prevalent, that it seemed for a while wholly unaccountable upon any other hypothesis than a universal "wish" as "father" to a universal "thought"; — a delusion also productive of most serious evil, by rendering both the Government and the people of England insensible or indifferent to a just consideration of their neutral duties, and to the appeals of the United States for the observance of them, in the foregone conclusion that the end of their National Government was close at hand, and that all such questions

and difficulties would be solved, or for ever disposed of, by that event.

To these causes of the apparently hostile course of England may be added a want of familiarity with international law upon the subject of neutral duties, for the practical knowledge of which she had enjoyed opportunities but "few, and far between,"—her chief experience having been in the assertion of belligerent rights, in which she had doubtless attained to conspicuous pre-eminence, though with some disregard, as was at times supposed, of the rights of neutral nations. And to this want of experience was added a temporary forgetfulness, if not absolute ignorance, of the diplomatic and judicial history of the United States concerning neutral duties in their relations with England at periods when she was the belligerent, and the United States the neutral; for the present familiar knowledge of which England is indebted to the eminent author whose Letter has been under consideration.

To all these sources of evil was added another (if not the chief); viz., the pre-occupation of the English mind, in private society and everywhere else, by Southern emissaries, in long-previous preparation for the outbreak of the Rebellion, and by their subornation of a large portion of the leading daily and periodical presses, which have poured forth a constant flood of vituperation, misrepresentation, falsehood, and brutal malignity, against the people of the free States, their institutions, and their cause, with no other provocation than their determination to sustain a benignant and free Government against the efforts of traitors, seeking its overthrow in order to substitute a despotism founded on chattel slavery. By such influences the English intellect has been clouded and bewildered, the English heart turned to bitterness, and the voice of reason, argument, and remonstrance, for a while, effectually drowned.

There has been, indeed, a noble class of men among her

jurists, philanthropists, and scholars, and there have been also some few of her statesmen, who, rising above these clamors, and with clear views of the real nature of our struggle, and of the position in which England was placing herself, have attempted to stem this tide of delusion, prejudice, and hatred, that threatened not only fatal shipwreck of all friendly relations between her and the United States, but also of those principles of international law upon which the peace of the world mainly depends. But their voices were unheard or unattended to by the ruling and commercial classes, until the support, happily found in the instincts of the humbler and uneducated portions of her people, and in the inexorable logic of events developed in the history of the Rebellion, enabled them to demand a hearing. This has, at length, begun to be accorded; and from it we may hope, that England and the United States may yet be restored to their former friendship, and that the law of nations may be settled upon broader and surer foundations for the future preservation of the peace of the world.

It is, of course, not to be anticipated that the claims for indemnity made by the United States will be favorably received, or very patiently listened to, at the present moment. Time is needful to enable the people of England to comprehend the grounds upon which they rest, and the importance of their recognition to her own future peace and welfare. Quick to resent imagined injustice, or any thing in the nature of an imputation on her good faith or her infallibility, the people of England are yet honest at heart, and eventually clear-sighted as to their interest. We may confidently hope, therefore, that, — when the passionate turmoil which now agitates both countries shall be over, and the vaporings of aspirants for political preferment shall have subsided, and become remembrances instead of active forces in the game of politics, and when a more enlightened humanity and sound policy shall assume sway in the national councils, — then the

manifest justice of these claims, and the importance of recognizing and establishing the principles on which they are founded, will insure their allowance, and thus strengthen the bonds of amity between the two freest and greatest commercial nations of the earth, and make strong the foundation of international law, as nothing else could do.

14 March, 1864.

APPENDIX.

EXTRACT FROM THE "REPORT OF SECRETARY MALLORY" TO THE "SPEAKER OF THE HOUSE OF REPRESENTATIVES, C. S. A."

[*From the New-York Times, Dec. 30th*, 1863.]

"During the months of July and August, I sent twenty-seven commissioned officers and forty trustworthy petty officers to the British provinces, with orders to organize an expedition and co-operate with army officers in an attempt to release the Confederate prisoners confined on Johnson's Island in Lake Erie. From time to time, I learned that the arrangements made were such as to insure the most complete success. A large amount of money had been expended; and, just as our gallant naval officers were about to set sail on this expedition, the English authorities gave information to the enemy, and thus prevented the execution of one of the best-planned enterprises of the present war. In accordance with the order of the President, early in the present year I despatched several agents to England and France with orders to contract for eight iron-clad vessels, suitable for ocean service, and calculated to resist the ordinary armament of the wooden vessels of the enemy. These ships were to be provided with rams, and designed expressly to break the blockade of such of the ports as were not blockaded by the iron-clad monitors of the enemy. Five of these vessels were contracted for in England, and three in France. Due precautions were taken against convening [contravening?] laws of England in the construction and equipment of these vessels. Three have been completed; but, owing to the unfriendly construction of her neutrality laws, the Government of England stationed several war-vessels at the mouth of the Mersey, and prevented their departure from England. Subsequently, they were seized by the British Government. Another and larger vessel has since been completed; but it is doubtful if she will be

allowed to leave the shores of England, although it is believed the precautions taken are sufficient to exempt her from the fate of her consorts. The vessels being constructed in France have been subjected to so many official visitations, that I have forwarded instructions to cease operations upon them until the result of negotiations now pending shall permit our agent to resume work upon them. . . . In view of all possible contingences, I have instructed the agents of this department to wait a more favorable opportunity for carrying out the instructions previously forwarded. By the last, I sent instructions that will shortly be made apparent to our enemies nearer home. I do not deem it advisable to communicate any portion of these plans to your honorable body at the present time, for reasons perfectly satisfactory to the President." *

---

* It is reported that the traitor Lieut. Maury, now resident in England, has raised a question of the authenticity of the document from which this extract is made. It was published in full in this country as long ago as last December, and has been copied, or cited and alluded to, in Northern papers, ever since; and it is not known that any doubt has been before raised, either North or South, of its genuineness as a Report of the Rebel Secretary of the Navy. If it were a forgery, it seems unaccountable that it should not have been denounced as such long ago by the Southern press, and that Lieut. Maury should not have had official information of its character.

It will be observed, however, that the facts, of which it is alluded to as proof, are abundantly established by other evidence, and are beyond all question, independently of this testimony. The preparation and organization, in Canada, of a military force for a raid upon Johnson's Island, were frustrated only by the interference of the British authorities, and are familiarly known to the Executive Government; and that the rams were built on contract for the Rebels, is believed to be universally known or conceded.

These gross outrages, therefore, upon the neutrality of England by the Rebel government remain the same, whether this alleged Report be genuine or false. Its only effect, if it be true, is to aggravate those offences, by adding audacious insult to injuries previously perpetrated, in proclaiming them to the world.

Boston : Printed by John Wilson and Son.